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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ८७१/३७५ सन् २००१

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>Criminal Appeal No.974/2001</u>	
	<u>APPELLANT</u>	Rampyare @ Munna Yadav, aged about 30 years, s/o Phool Singh Yadav, Occupation - Service as Peon in Tehsil Office, R/o Gudrupara, Police Station Mahasamund, Tehsil & Distt. Mahasamund, Chhattisgarh - At present R/o Tehsil Office Saraipali, Distt. Mahasamund, Chhattisgarh
		<u>Versus</u>
	<u>RESPONDENT</u>	The State of Chhattisgarh
	<u>CRIMINAL APPEAL u/s 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973</u>	
	D.B HON'BLE SHRI L.C. BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.	
	<u>ORAL JUDGMENT</u> (25.07.2007)	
	<u>L.C. Bhadoo, J:-</u>	
	Shri Sanjeev Kumar Agrawal, counsel for the appellant. Shri Satish Gupta, Deputy Govt. Advocate, for the State. Heard.	
	(1) This appeal is directed against the judgment of conviction and order of sentence dated 26.9.2001 passed by the 1st Addl. Sessions Judge, Mahasamund, in Sessions Trial No.400/2000	

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मामला क्रमांक CR.A.974 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	whereby the learned Addl. Sessions Judge, after holding the accused appellant guilty for the offence punishable u/s 302 I.P.C., for committing murder of his wife namely Sarojini Yadav @ Rajni, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/- in default of payment of fine, to further undergo R.I. for 3 months. (2) The case of the prosecution in brief is that the Officer Incharge of the Police Station, Saraipali, received telephonic message on 02.8.2000 at about 10.30 p.m. in the night that Sarojini Yadav, resident of Devendra Nagar, Saraipali, has been admitted in the Government Hospital, Saraipali in burnt condition. Receiving this information, P.W.11 Bhukanlal Sahu the Head Constable reached the hospital who made a requisition Ex.P.11 to Dr.Narottam Lal Sahu to conduct the medical examination of Sarojini Yadav and in turn the Doctor informed him that Sarojini Yadav is fully conscious and is responding well to all questions. The smell of kerosene was emanating from the body of deceased. The Doctor after medical examination, prepared the injury report Ex.P.16 and mentioned that Sarojini has received 80% burn injuries. The S.D.M., Saraipali was requested for recording dying declaration of Sarojini, who in turn asked S.D. Thakur to record dying declaration. On this, S.D. Thakur went to the hospital and recorded dying declaration Ex.P.2. She was referred to medical college, Raipur. During the treatment in medical College, Raipur, Sarojini succumbed to burn injuries on 6.8.2000 at about 11.35	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	a.m. The <i>merg</i> intimation Ex.P.5 was sent to Police Station Maudhapara, Raipur, on which the Assistant Sub Inspector Vipin Lal Walia gave a requisition Ex.P.15 for postmortem of Sarojini on which Dr.Sanjay Kumar Dadu (P.W.16), conducted the postmortem on the body of deceased. He prepared postmortem report Ex.P.24, after receiving the dying declaration and <i>merg</i> intimation, the First Information Report Ex.P.19 was registered and the Investigating Officer left for the scene of occurrence. The lock of house of the accused was opened under Ex.P.20, the site plan Ex. P.21 was prepared at the place of occurrence. Under Ex.P.8, the Investigating Officer, seized certain articles from the place of occurrence i.e., the Match Box, Match sticks, the plastic bottle of Kerosene oil, Saree, Blouse, and one Lamp (Chimney). The Patwari prepared the site plan Ex.P.25. The seized articles were sent to Forensic Science Laboratory, Raipur under Ex.P.22 and after completion of the investigation, the charge sheet was filed in the Court of J.M.F.C., Saraipali, who in turn committed the case to Sessions Judge, Raipur, from where the learned Addl. Sessions Judge, received the case on transfer for trial. (3) The prosecution in order to establish the charges against the accused examined 17 witnesses. The statement of the accused was recorded u/s 313 Cr.P.C., in which he denied the material appearing against him and stated that Sarojini set herself on fire after pouring kerosene oil on her body. He was sleeping at that	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	time when he heard cries; he woke up and tried to save the life of his wife and as a result of which, he also sustained burn injuries. (4) The learned Addl. Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused as aforesaid. (5) We have heard learned counsel for the parties at length and have also perused the records of the sessions trial. (6) Learned counsel for the appellant has not disputed the fact that Sarojini died on account of burn injuries sustained by her. More over, from the post mortem report, the evidence of P.W.3 S.D. Thakur who recorded the dying declaration of Sarojini Yadav @ Rajni and the evidence of Dr. R.S. Verma (P.W.10), it is established that the death of Sarojini was on account of burn injuries. (7) As far as the involvement of the accused in the crime in question is concerned, in this case there is no ocular and direct evidence in order to establish the charge against the accused. The whole case rests on the following circumstances (i) that the dying declaration Ex.P.2 was made by the deceased Sarojini before the Executive Magistrate P.W.3 S.D. Thakur on 3.8.2000 and also the oral dying declaration made by Sarojini before her father Premlal Yadav (P.W.7). (ii) that at the time of incident, the accused and the deceased were present in the house.	

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मामला क्रमांक ८२.८. १७४ सन् २००१

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	(8) As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter <u>Dhananjoy Chatterjee -Vs- State of W.P. reported in (1994) 2 SCC 222</u>, which is quoted below: “in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof.” (9) As far as the first point is concerned, P.W.3 S.D. Thakur has stated that on 3.8.2000 he was working as Executive Magistrate at	

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मामला क्रमांक Cr A. 974 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Tahsil Saraipali. On that day on the direction of S.D.M., Saraipali, he recorded the dying declaration of Sarojini in the Govt. Hospital. At that time, the Doctor and nurse were also present. The dying declaration was recorded on 12.15 p.m. in the mid night. He recorded the dying declaration in question and answer form that was completed by 12.30 p.m. When he enquired from Sarojini as to who has set her on fire, she replied that the Kerosene oil was poured by her husband on her body and thereafter he started abusing her saying why she has not prepared the dry vegetable, then she replied that as you have poured kerosene oil on her you should also set her on fire by Match Box and she threw a match box towards him. On this, her husband after lighting the match stick, threw the same, as a result of which, her Saree caught fire and she sustained burn injuries (10) P.W.11 Bhukhanlal Sahu, Head Constable has stated that on 2.8.2000 somebody has telephoned that accused Rampyari who is working as peon in the court of S.D.M. has burnt his wife. Therefore, he went to the place of occurrence. The people informed him that Rampyare and his wife have been taken to the Govt. Hospital for treatment. Thereafter, he went to the Hospital and submitted the form Ex.P-11 & P-12 for medical examination of Sarojini and Rampyare. Thereafter, he requested the Tahsildar for recording dying declaration of Sarojini. P.W.14 Dr. Narottamlal Sahu has stated that on 3.8.2000 he was working as Assistant Surgeon in the Community Health Center, Saraipali. On that day,	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the Constable Bhushan Chandrakar brought Sarojini Yadav to the hospital in burnt condition. At that time, she was conscious and was able to reply the questions. The smell of the kerosene oil was emanating from her body. The burn injuries were on both sides of the cheeks, on stomach, chest, hand and legs. He gave certificate on dying declaration Ex.P.2 at E - E portion. On enquiry by the officer who recorded the dying declaration, he stated that the patient was conscious and fit to give her statement. Thereafter, she was referred to the medical college, Raipur. As per the above evidence of the Doctor and Bhukhanlal as also P.W.3 S.D. Thakur, Sarojini Bai was conscious and fit to give her statement and as per S.D. Thakur, she gave the statement Ex.P.2. In the cross examination of this witness, the defence has not been able to elicit any circumstance to show that Sarojini was not in fit mental condition to give her statement or there was any other person standing behind her to advise her to give wrong statement. A perusal of the dying declaration Ex.P.2 shows that the accused appellant asked his wife to prepare dry vegetable whereas she prepared vegetable in which she put the water, when the vegetable was given to the accused appellant he became angry and said that as to why she has put water in the vegetable. He poured kerosene oil on her body from the lamp (Chimney) that enraged Sarojini, on this she replied that since he has poured the kerosene on her body, he should also set her on fire and gave the match box. The accused took out a stick from the match box,	

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मामला क्रमांक Cr.A. 974/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	lighted the said match stick and threw the same, in that process the saree of Sarojini caught fire. Thereafter, the accused tried to extinguish the fire and as a result of which he also sustained injuries upto 35%. Then the people of the vicinity took them to the hospital where the father of the deceased Premlal Yadav also came, who was residing in Saraipali itself and who has been examined as P.W.7. He has also corroborated the above fact regarding dying declaration. He has stated that the villagers brought her daughter and son-in-law in an Ambulance. They said that they have sustained burn injuries and they are to be taken to Raipur, therefore, he alongwith his wife took them to Raipur. On enquiry she disclosed that the accused has set her on fire. Therefore, from the above evidence of Executive Magistrate S.D. Thakur, Dr. Narottamlal Sahu and Bhukhanlal, it is established that Sarojini was in a fit state of mind to give her statement and she gave her dying declaration on her free will before the Executive Magistrate S.D. Thakur and the same has been proved by him. Therefore, the involvement of the accused in setting Victim on fire is established from the above evidence. (11) Learned counsel for the appellant argues that if the dying declaration is taken as it is, in this dying declaration it has come on record that when the accused appellant became angry because his wife put water in vegetable, in the first instance, he scolded the deceased Sarojini, thereafter poured kerosene on her body, on which, the deceased herself said to the accused that since he has	

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मामला क्रमांक U.A. 974/ सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -१-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	poured kerosene on her body he should set her on fire and in anger she handed over the match box to him. On account of provocation and in heat of passion, the accused took out the match stick and after lighting the same, threw it, as a result of which, Saree of the deceased caught fire and she received the burn injuries. The accused tried to save her and in that process, he himself sustained injuries upto 35%, therefore, from the above facts, it cannot be said that the accused set her on fire with an intention to cause death and the case of the accused appellant is covered under Exception 1 of section 300 of I.P.C. (12) On the other hand, Mr. Gupta supported the judgment of the trial Court. (13) Having heard counsel for the parties, in order to appreciate the arguments advanced by learned counsel for the appellant, we have considered the argument. It is admitted position that when in heat of passion the accused poured kerosene on the body of Sarojini who in turn handed over the Match Box to the accused and asked him that since he has already poured kerosene on her body, he should set her on fire also, on this the accused after lighting the match stick, threw the same as a result of which, Saree of the deceased Sarojini caught fire, thereafter the accused himself has also tried to extinguish the fire and in that process he sustained burn injuries upto 35%. Therefore, from the above portion of the dying declaration it shows that the accused was angry on account of dry vegetable was not prepared by the	

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मामला क्रमांक C.A. NO-974 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -10-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	deceased and the quarrel took place between the husband and wife on a petty matter. When the accused was in anger, the deceased Sarojini further provoked him by giving a match box and saying that since he has poured kerosene on her body, he should set her on fire, in that process, the accused after lighting the match stick, threw the same, as a result of that, Saree of the deceased caught fire. Therefore, the whole incident happened in a fit of anger when the accused became angry and lost his temper. Therefore, in the circumstances, the case of the accused is covered under Exception 1 of section 300 of I.P.C., and the case of accused does not travel behind section 304 (part-i) of the I.P.C. (14) For the foregoing reasons, the conviction and sentence of the accused u/s 302 I.P.C. cannot be sustained. In the result, the appeal of the appellant partly succeeds. The conviction and sentence imposed upon him u/s 302 I.P.C. are set aside. Instead thereof, he is convicted u/s 304 (part-i) of I.P.C. and sentenced to undergo R.I. for 10 years. The accused is said to be in detention since 25.8.2000. He shall be entitled for the set off for the above detention period and other benefits.	
Rao	Sd/- L.C. BHADOO Judge	Sd/- Sunil Kumar Sinha Judge